

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1007 OF 2001

Amrutlal Tirathram Gupta. ...Appellant

Vs.

Smt.Sushma Sanjiv Gupta & anr. ...Respondents.

Mr.R.D.Dhanuka, for Appellant.

Mr.Tejas Deshmukh i/b. A.A.Kumbhakoni, for
Respondents.

CORAM: D.K.DESHMUKH, J.

DATED: 26th April, 2006

P.C.:-

1. The order of the Joint District Judge upholding the Award and the Award made by the Arbitrator is liable to be set aside on several grounds. The admitted position is that before the Arbitral Tribunal neither any statement of claim was filed nor any statement of defence was filed. It is

mandatory requirement of sub-section (1) of Section 23 of the Arbitration and Conciliation Act, 1996 that the claimant has to file his statement of claim and the respondent has to submit his defence, and thereafter the parties have to lead documentary and oral evidence.

2. Perusal of the Award itself shows that the learned Arbitrator consulted his friend before making the Award. Obviously, an Arbitrator cannot consult anybody behind the back of the parties even if the Arbitrator wants to consult somebody then that same person has to be called as witness. The Award has been made by the learned Arbitrator on 27.12.1997 on a stamp paper but the record shows that the Award was actually made on 17.12.1997 and after making the Award on 17.12.1997 the learned Arbitrator added additional pages on 20.12.1997 and has made the Award on 27.12.1997. It is clear from the provisions of Section 32 of the Act that once an Arbitrator makes Award, subject to the provisions of Section 33 and sub-section (4) of Section 34 of the Act, the mandate of the arbitrator stands terminated. Thereafter, he cannot do anything in the matter. Therefore, the Award dated 27.12.1997 is clearly made by the learned

Arbitrator after the mandate had come to an end. For all these reasons therefore, the Award is liable to be set aside. The reasons given by the IInd Extra Joint District Judge, Pune, for declining to set aside the Award are perverse to say the least. In the result therefore, the present appeal succeeds. The order dated 27.9.2001 passed in Miscellaneous Application no.433 of 1999 is set aside. Miscellaneous Application no.433 of 1999 is allowed. The Award dated 27.12.1997 made by the Arbitrator challenged in Miscellaneous Application no.433 of 1999 is set aside. No order as to costs.

3. It is a common ground that during the pendency of this appeal the respondent no.1 has withdrawn Rs.35,00,000/- from the Court. He is directed to re-deposit the amount in the Court within a period of Eight weeks from today with interest at the rate of 9% per annum. The deposit shall be made with due intimation to the appellant. On the amount being deposited, the appellant shall be permitted to withdraw the amount.